

REMARKS

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

New claims 21 and 22 have been added.

This amendment adds, changes and/or deletes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate defined status identifier.

After amending the claims as set forth above, claims 1-17 and 19-22 are now pending in this application.

Rejection under 35 U.S.C. § 112

Claims 1-17, 19, and 20 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Applicant respectfully submits that the amendments to the claims render this rejection moot. Reconsideration and withdrawal of this rejection is respectfully requested.

Rejections under 35 U.S.C. § 103

Claims 1-4 and 9-17 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Pub. No. 2003/0124413 to Bai *et al.* (hereafter “Bai”) in view of U.S. Patent No. 6,770,394 to Appleby *et al.* (hereafter “Appleby”) and U.S. Patent No. 6,562,507 to Cisar *et al.* (hereafter “Cisar”). This rejection is respectfully traversed.

Applicant submits that Bai was published after the filing date for Applicant’s international application, PCT/EP02/14530, which was filed on December 19, 2002, and the filing date for the international application is the U.S. filing date for the current application, which is the national stage of the international application. See MPEP § 1893.03(b). Thus, Bai is not prior art under 35 U.S.C. § 102(b) or (a).

Enclosed with this response is a declaration by Marc Messely under 37 C.F.R. § 1.131. Applicant respectfully submits that the evidence of this declaration establish an earlier date of invention than Bai's 102(e) date of December 27, 2001, thus removing Bai as a prior art reference. Applicant is currently contacting the inventors for the current application about executing declarations as well and will submit such declarations in a supplemental response if they are executed by the inventors.

With Bai removed as a prior art reference, Applicant respectfully submits that the remaining combination of Appleby and Cisar fails to disclose or suggest all of the features of claims 1 and 3. Claims 2, 4, and 9-17 depend from claim 1.

Furthermore, even if Bai were a prior art reference, which Applicant submits that it is not in view of the enclosed declaration, the combination of Bai, Appleby, and Cisar does not disclose or suggest all of the features of claims 1 and 3.

The Office argues on page 3 of the Office Action that Bai discloses an impermeable metal structure, citing the current collector 80 of Bai. However, Bai discloses that the current collector 80 includes open areas 82 that allow a fuel gas and an oxidant supply to reach an underlying porous metal coating 60 and gas diffusion layer 50. See Bai at paragraph 0028. Thus, Bai does not disclose or suggest that the current collector 80 is an impermeable metal structure, as recited in claims 1 and 3.

In addition, the Office argues on pages 3-4 of the Office Action that Bai discloses a macro diffusion layer 40 that is directly adjacent to the current collector 80 and that the porosity of the macro diffusion layer 40 is greater than the porosity of a micro diffusion layer that is on an opposite side of the macro diffusion layer 40. However, Bai does not disclose that the macro diffusion layer 40 is directly adjacent to the current collector 80 or that the macro diffusion layer 40 is sintered to the current collector 80 because Bai discloses a porous metal coating 60 that is located between the current collector 80 and the macro diffusion layer 40. See Bai at paragraphs 0024 and 0025 and Figure 1.

Appleby and Cisar fail to remedy the deficiencies of Bai. Thus, even if Bai could be considered a prior art reference, which Applicant submits that it is not in view of the enclosed

declaration, the combination of Bai, Appleby, and Cisar does not disclose or suggest all of the features of claims 1 and 3.

For at least the reasons discussed above, reconsideration and withdrawal of this rejection is respectfully requested.

Claims 5 and 6 are rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Bai, Appleby, and Cisar as applied to claim 1 and further in view of U.S. Pub. No. 2002/0150808 to Uchida *et al.* (hereafter “Uchida”). This rejection is respectfully traversed. With Bai removed as prior art, Uchida fails to remedy the deficiencies of Appleby and Cisar discussed above in regard to independent claim 1, from which claims 5 and 6 depend. Furthermore, even if Bai could be a prior art reference, Uchida fails to remedy the deficiencies of Bai, Appleby, and Cisar discussed above in regard to independent claim 1, from which claims 5 and 6 depend. Reconsideration and withdrawal of this rejection is respectfully requested. In addition, Uchida is not prior art. Uchida has no 102(e) date because its PCT application was published in Japanese as WO 02/03488 on January 10, 2002. Both the U.S. and PCT publication dates are after Applicant’s date of invention and are not prior art under 102(e).

Claims 7 and 8 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Bai, Appleby, and Cisar as applied to claim 1 and further in view of U.S. Patent No. 6,022,634 to Ramunni *et al.* (hereafter “Ramunni”). This rejection is respectfully traversed. With Bai removed as prior art, Ramunni fails to remedy the deficiencies of Appleby and Cisar discussed above in regard to independent claim 1, from which claims 7 and 8 depend. Furthermore, even if Bai could be a prior art reference, Ramunni fails to remedy the deficiencies of Bai, Appleby, and Cisar discussed above in regard to independent claim 1, from which claims 7 and 8 depend. Reconsideration and withdrawal of this rejection is respectfully requested.

Claims 19 and 20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Cisar as applied to claim 1 and further in view of U.S. Patent No. 6,605,381 to Rosenmayer (hereafter "Rosenmayer"). This rejection is respectfully traversed. With Bai removed as prior art, Rosenmayer fails to remedy the deficiencies of Appleby and Cisar discussed above in regard to independent claim 1, from which claims 19 and 20 depend. Furthermore, even if Bai could be a prior art reference, Rosenmayer fails to remedy the deficiencies of Bai, Appleby, and Cisar discussed above in regard to independent claim 1, from which claims 19 and 20 depend. Reconsideration and withdrawal of this rejection is respectfully requested.

New Claims

New claims 21 and 22 have been added. Claim 21 depends from claim 1 and claim 22 depends from claim 3. Claims 21 and 22 are allowable over the prior art for at least the reasons discussed above and for their respective additional recitations.

Conclusion

Applicant submits that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing or a credit card payment form being unsigned, providing incorrect information resulting in a rejected credit card transaction, or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith,

Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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